

THE ANTI – COUNTERFEIT GOODS AND SERVICES BILL

MEMORANDUM

1. Policy and principles of the Bill

The object of the Bill is to prohibit the sale, manufacture, production, packaging, re-packaging, labelling, marketing, blending, processing, treatment, importation and exportation of counterfeit goods and counterfeit services that infringe upon protected intellectual property rights and prescribed standards; to prohibit release of counterfeit goods and counterfeit services into the channels of commerce; to create offences for dealing in counterfeit goods and counterfeit services; and for related matters.

2. Gaps in the existing law

The laws governing intellectual property rights in Uganda include the Constitution of the Republic of Uganda, 1995, the Copyright and Neighbouring Rights Act, 2006, the Trademarks Act, 2010, the Geographical Indications Act, 2013, the Industrial Property Act, 2014, and the Plant Variety and Protection Act, 2014, recognise, protect and provide for the development and exploitation of the intellectual property rights of persons engaged in novel and creative activities including patented inventions, copyright materials, valuable trade secrets, trademarks, new plant varieties and geographical indications.

However, the development and exploitation of intellectual property assets recognised and registered under the intellectual property laws are hindered by lack of a single statutory definition of counterfeiting and absence of effective collaboration and participation of the various institutional mandate holders and the private sector to effectively combat counterfeiting of goods and counterfeit services. This gap undermines legitimate trade, discourages innovation and causes significant financial losses for rights holders, Government and for legitimate businesses, thereby affecting public safety through the existence of substandard goods which pose risk to human life, animal life, health, safety and danger to

property.

The laws dealing with counterfeiting of goods are limited to a few provisions in the Trademarks Act, 2010 which criminalises the forging and counterfeiting of a trademark under section 71, the Copyright and Neighbouring Act, 2006 which prohibits the publication, distribution or reproduction of copyright work or the performance, broadcasting, importation of protected works without the consent of the owner or agent under section 47 and section 18 of the East African Community Customs Management Act, 2004 which prohibits the importation of counterfeit goods.

However, these provisions are limited in scope since they consider counterfeiting in terms of infringement of protected intellectual property rights and do not effectively deal with other manifestations of counterfeit goods and counterfeit services arising from the manufacture, production, composition, blending, processing, treatment, packaging, re-packaging, labelling, selling or marketing of counterfeit goods or other goods and services which adversely affect public health and wealth.

The rest of the intellectual property laws, including the Geographical Indications Act, 2013, the Industrial Property Act, 2014 and the Plant Variety and Protection Act, 2014 as well as other laws prescribing the standards applicable to the provision of essential goods and services to the public do not prohibit the sale, manufacture, production, packaging, re-packaging, labelling, marketing, blending, processing, treatment, importation and exportation of counterfeit goods and counterfeit services.

Therefore, in order to enhance the protection of the general public against substandard and defective goods and services and the owners or licensees of intellectual property rights against infringement and subsequently the release of counterfeit goods into the channels of commerce, there is need to have a harmonised, coordinated, and simplified enforcement regime, that introduces punitive, deterrent and effective measures for combating the production and marketing of counterfeit goods in order to protect the legitimate interests of persons who have expended energy, skills, initiative and financial resources to produce goods and promote honest trading.

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THE ANTI-COUNTERFEIT GOODS AND SERVICES BILL

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ENTITLED

THE ANTI-COUNTERFEIT GOODS AND SERVICES ACT

An Act to prohibit the sale, manufacture, production, packaging, re-packaging, labelling, marketing, blending, processing, treatment, importation and exportation of counterfeit goods and counterfeit services that infringe upon intellectual property rights and prescribed standards; to prohibit release of counterfeit goods and counterfeit services into the channels of commerce; to create offences and penalties for dealing in counterfeit goods and counterfeit services; to provide for functions and powers of the implementing bodies; and for related matters.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Object of Act

The object of this Act is —

- (a) to establish a comprehensive regulatory framework to prohibit the sale, manufacture, production, packaging, re-packaging, labelling, marketing, blending, processing, treatment, importation and exportation of counterfeit goods and counterfeit services;
- (b) to provide a comprehensive definition of counterfeiting to include the sale, manufacture, production, packaging, re-packaging, labelling, marketing, blending, processing, treatment, importation and exportation of goods or services-
 - (i) which are subject to intellectual property rights;
 - (ii) the provision of which is regulated by law; and
 - (iii) for which standards have been prescribed by a national standards body or any other body authorised by law to set standards;
- (c) to establish a cost efficient inter-government collaboration against counterfeiting of goods and services;
- (d) to provide for functions and powers of the implementing bodies;

- (e) to encourage intellectual property rights holders and the private sector to participate in efforts against counterfeiting of goods and services;
- (f) to promote the buying and selling of genuine and quality products and services and to eliminate the burden and dangers of counterfeiting to public health and the economy; and
- (g) to enhance the penalties for the sale, manufacture, production, packaging, re-packaging, labelling, marketing, blending, processing, treatment, importation and exportation of goods or services.

2. Interpretation

In this Act, unless the context otherwise requires—

“author” means the physical person who created or creates work protected under the Copyright and Neighbouring Rights Act, 2006 and includes a person or authority commissioning work or employing a person making work in the course of employment;

“authorised officer” means a person referred to in section 17;

“Agricultural (Chemicals) Control Board” means the Board established under the Agricultural Chemicals (Control) Act, 2006;

“Atomic Energy Council” means the Council established under the Atomic Energy Act, 2008;

“counterfeiting” includes-

- (a) taking the following actions without the authority of the owner or licensee of intellectual property rights in respect of goods-
 - (i) the manufacturing, producing, packaging, re-packaging, labelling, selling or marketing, whether in Uganda or outside Uganda, of any goods by which the goods are imitated to appear identical or substantially similar to goods;
 - (ii) the manufacturing, producing, packaging, re-packaging,

labelling, selling or marketing, whether in Uganda or outside Uganda, of the subject matter of an intellectual property, or a colourable imitation of it so that the other goods are likely to be confused with or be taken as being the goods of the owner or licensee or any goods manufactured, produced or made under his or her license;

- (iii) the manufacturing, producing or making of copies of protected works, in Uganda or outside Uganda, in violation of the author's rights or related rights;
 - (iv) in the case of drugs, the deliberate or fraudulent labelling of the drug with respect to its identity, source or ingredients;
- (b) the manufacture, production, composition, blending, processing, treatment, packaging, re-packaging, labelling or making of a good in contravention of-
- (i) the standards prescribed for the good by a national standards body or any other relevant body; or
 - (ii) the standard specifications advertised or approved for the good by a national or international standards body;
- (c) the intentional or fraudulent labelling of a good with respect to its use, identity, source, ingredients, efficacy, content or packaging;
- (d) the manufacture, production, or sale of a good which is unfit for human or animal consumption;
- (e) the composition, blending, processing, treatment, adulteration or handling of a good which makes the good unfit for human or animal consumption;
- (f) the manufacture, production, composition, blending, processing, treatment or importation of a good in contravention of the any law relating to the good;
- (g) in case of services, the taking of the following actions without the authority of the owner or licensee of intellectual property rights in respect of the services-
- (i) the production, reproduction, copying, duplication,

- distribution or redistribution of a service;
- (ii) the sale, offer for sale, availing, making available or streaming of any service to a member of the public; or
- (iii) the communication, transmission, broadcasting, downloading or the utilisation of the service;

(h) the passing off of goods or services as goods or services; or

(i) the aiding or abetting of any acts or omissions referred to in paragraphs (a) (b), (c), (d), (e), (f) and (g);

“counterfeit goods” means goods that are as a result of counterfeiting;

“counterfeit service” means a service that is a result of counterfeiting;

“currency point” has the value specified in Schedule 1 to this Act;

“Dairy Development Authority” means the Authority established under the Dairy Industry Act;

“exporter” includes a person who -

- (a) is the owner, licensee or has beneficial ownership in or is in control or possession of any goods exported or to be exported from Uganda;
- (b) carries the risk for any goods exported or to be exported from Uganda;
- (c) attempts to export any goods from Uganda; or
- (d) acts on behalf of any person referred to in paragraphs (a), (b) or (c);

“goods” includes—

- (a) all things and personal chattels, including specially manufactured goods, which are movable at the time of identification to the contract of sale other than money representing the price, investment securities and things in action;
- (b) emblements, growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under

the contract of sale;

(c) computer software; and

(d) an undivided share in goods held in common;

“importer” includes any person who—

(a) is the owner, licensee or has beneficial ownership or is in control or possession of any goods imported or to be imported into Uganda;

(b) carries the risk for any goods imported or to be imported into Uganda;

(c) attempts to import any goods into Uganda; or

(e) acts on behalf of any person referred to in paragraphs (a), (b) or (c);

“implementing body” means the implementing bodies listed in schedule 2;

“intellectual property right” includes any right protected or granted under-

(a) the Copyright and Neighbouring Rights Act, 2006;

(b) the Trademarks Act, 2010;

(c) the Geographical Indications Act, 2013;

(d) the Industrial Property Act, 2014, and

(e) the Plant Variety and Protection Act, 2014; or

(f) any other enactment granting rights over any tangible or intangible creations of human intellect;

“local government” includes a local government council established under the Local Government Act and the Kampala Capital City Authority;

“licensee” means a person who has been authorised by the owner of the intellectual property right to use his or her intellectual property rights;

“Minister” means the Minister responsible for justice;

“National Building Review Board” means the Board established under the Building Control Act, 2013;

“National Environment Management Authority” means the Authority established under the National Environment Act, 2019;

“National Identification and Registration Authority” means the Authority established under the Registration of Persons Act, 2015;

“National Information Technology Authority” means the Authority established under the National Information Technology Authority Uganda Act, 2009;

“National Seed Board” means the Board established under the Seeds and Plant Act, 2006;

“packaging” means any container, wrapping or outer cover and contents of it, or any bundle or single piece in the case of unpacked goods;

“passing off” means falsely representing one’s goods or services as that of another person in an attempt to deceive a potential buyer;

“person” includes any individual, firm, company, association, partnership or body of persons whether incorporated or unincorporated;

"Plant Varieties Protection Committee" means the Committee constituted by the Minister responsible for agriculture under section 4 of the Plant Variety and Protection Act, 2014;

“services” means any service or facility provided for gain or reward or otherwise than free of charge, including services or facilities for—

- (a) banking, insurance, grants, loans, credit or financing;
- (b) amusement, cultural activities, entertainment, instruction, recreation or refreshment;
- (c) accommodation, transport, travel, parking or storage;
- (d) the care of persons, animals or things;
- (e) membership in a club or organization or any service or facility provided by the club or organization; and
- (f) any rights, benefits, privileges, obligations or facilities that are or are

to be provided, granted or conferred in the course of services;
but does not include services provided under a contract of employment;

“Uganda Communications Commission” means the Commission established under the Uganda Communications Act, 2013;

“Uganda Investment Authority” means the Authority established under the Investment Code Act, 2019;

“Uganda National Bureau of Standards” means the Bureau established under the Uganda National Bureau of Standards Act;

“Uganda Revenue Authority” means the Authority established under the Uganda Revenue Authority Act;

“vehicle” includes any motor vehicle, van, truck, trailer, caravan, cart, barrow, train, aircraft, ship, boat or other vessel and includes any craft or other means of conveyance.

PART II— ADMINISTRATION OF ACT

3. Minister to oversee implementation of Act

- (1) The minister shall, in consultation with the minister responsible for the relevant implementing body, coordinate, supervise and oversee the implementation of this Act.
- (2) The minister may, in consultation with the minister responsible for the relevant implementing body, in writing, issue policy guidelines to the implementing body regarding the performance of the functions of the implementing body.
- (3) The implementing body shall comply with the policy guidelines issued under this Act.

4. Implementation of Act

- (1) This Act shall be implemented by the implementing bodies listed in Schedule 2.
- (2) The implementing bodies shall perform the following functions—

- (a) to sensitise the public on matters relating to counterfeiting;
 - (b) to combat counterfeiting, trade and other dealings in counterfeit goods or services in Uganda;
 - (c) to formulate training programmes to alleviate counterfeiting;
 - (d) to co-ordinate with national, regional or international organisations involved in alleviating counterfeiting;
 - (e) to advise Government on policies and measures concerning the promotion and protection of intellectual property rights;
 - (f) to inquire into, study and conduct research into matters relating to counterfeiting and the protection of intellectual property rights;
 - (g) to carry out any other functions prescribed under this Act or any other written law;
 - (h) to receive and inquire into complaints relating to counterfeit goods and services;
 - (i) perform any other functions as may be prescribed by the Minister, by statutory instrument.
- (3) The implementing bodies may in performing their functions under this Act engage the service of experts or consultants to facilitate the performance of their functions under the Act.

5. Powers of implementing body

(1) The implementing body may, upon a complaint or on its own volition—

- (a) enter upon and inspect, any place, premises or vehicle at, on or in which goods or services that are reasonably suspected of being counterfeit goods or counterfeit services, are to be found, or on reasonable grounds, are suspected to be, or to be manufactured, produced or made, and search the place, premises or vehicle and any person in that place, for such goods or services and for any other evidence of the alleged or suspected act of dealing in counterfeit goods or counterfeit services and for the purposes of entering, inspecting and

searching such a vehicle, a police officer may stop the vehicle, wherever found, including on any public road or at any other public place;

(b) take the steps that may be reasonably necessary to terminate the manufacturing, production, composition, blending, processing, treatment, packaging, re-packaging, labelling or making of counterfeit goods or counterfeit services, or any other act of dealing in counterfeit goods or counterfeit services being performed, at, on or in such place, premises or vehicle, and to prevent the recurrence of any such act in future;

(c) seize and detain, and, where applicable, remove for detention, goods or services suspected of being counterfeit goods or counterfeit services found at, on or in such place, premises or vehicle; or

(d) seize and detain, and, where applicable, remove for detention, any tools which may be used in the manufacturing, production, composition, blending, processing, treatment, packaging, re-packaging, labelling or making of counterfeit goods or counterfeit services;

(2) The implementing body may in exercise of any of the powers prescribed in subsection (1)—

(a) question the person found in any place, premises or vehicle and obtain a statement from him or her; or

(b) demand and procure from a person found in any place, premises or vehicle a book, document, article, item or object which in any way may be relevant to the nature, quantity, location, source or destination of the goods or services in question, or the identity and address of anyone involved or who appears to be involved as a supplier, manufacturer, producer, maker, distributor, wholesaler, retailer, importer, exporter or clearing and forwarding agent of, or other dealer in, the goods or services in question.

(4) The implementing body may, acting under the authority of a warrant issued by a court, seal or seal off any place, premises or vehicle at, on or in which—

- (a) counterfeit goods or counterfeit services are found or suspected to be found, or manufactured, produced, composed, blended, processed, treated, packaged, re-packaged, labelled or made, either wholly or in part;
 - (b) any trade mark, any exclusive mark or any work which is the subject matter of copyright, is applied to goods or services; or
 - (c) the packaging for counterfeit goods or counterfeit services is prepared or the packaging of those goods or services is undertaken.
- (5) The steps taken under subsection (1) (b) shall not include the destruction or alienation of the counterfeit goods or counterfeit services unless authorised by the court, but the counterfeit goods or counterfeit services may be destroyed if they are perishable, dangerous or detrimental to health.
- (6) Where goods or services are destroyed on the basis that they are perishable or detrimental to health or dangerous and it is found upon inquiry that the goods or services were not counterfeit goods or counterfeit services, the court shall order that reasonable compensation be paid to the owner or licensee of the goods or services.
- (7) Subsection (2) shall not be construed as requiring a person to answer any question or give any information if to do so might incriminate him or her.

6. Implementing body to cooperate with other agencies

The implementing body shall, in carrying on its functions under this Act, cooperate with the police, any other relevant implementing body or any other organisation or agency whose operations relate to the implementation of this Act.

7. Duties of implementing body following seizure of goods

- (1) The implementing body which seizes any goods suspected of being counterfeit goods shall—
- (a) as soon as possible but not later than five working days, prepare an inventory of the goods seized;

- (b) furnish a copy of the inventory to the person from whom the goods were seized within five working days after the seizure;
 - (c) as soon as possible, but not later than five working days from the date of seizure, remove the goods, if transportable, to a place for safe custody at the cost of the person from whom the goods are seized or, if not capable of being removed or transported, declare the goods to have been seized in the place where they are found, and seal or cordon off and lock up the goods or place them under guard at the place where they were found; and
 - (d) by written notice, inform the person from whom the goods are seized of the action taken and of the address of the place where the seized goods are kept.
- (2) A person aggrieved by the seizure of goods may at any time apply to the court for a declaration that the seized goods are not counterfeit goods and for an order that they be returned to him or her.
- (3) The court may grant or refuse the declaration applied for under subsection (2) and may make such order as court determines necessary, including an order as to the payment of damages and costs, if applicable.

8. Storage of seized goods

- (1) Goods that have been seized under this Act shall be stored and kept in safe custody—
- (a) in the case of goods seized at a plant or factory, at the plant or factory;
 - (b) in the case of goods seized at a point of sale, at the point of sale; or
 - (c) in the case of goods seized at the point of importation or exportation, at a point determined by the implementing body, at the expense of the importer or exporter.
- (2) Goods seized under subsection (1) shall be stored until—
- (a) ordered by the court under this Act to return, release, destroy or

otherwise dispose of the goods as specified in the order; or

- (b) the goods are released to the person from whom they were seized.
- (3) Upon an application in writing to the implementing body, goods seized under this Act shall, within five working days, be made available for inspection by any interested person at the place the goods are stored.
- (4) The implementing body may, in the prescribed manner, take samples in reasonable quantities for carrying out the requisite testing or analysis necessary for the discharge of the functions of the implementing body.

9. Release of seized goods

The implementing body which seized and detains goods under this Act shall, upon ascertaining that the goods seized and detained are not counterfeit goods, return the goods to the person from whom the goods were seized, less any portion of the goods which has been reasonably utilized for the purpose of any test or analysis.

10. Forfeiture of seized goods

- (1) A court which convicts a person of an offence under this Act may order the forfeiture, to the State, of the goods in relations to which the offence was committed.
- (2) Notwithstanding subsection (1), an implementing body which seizes and detains goods under this Act may, upon ascertaining that the sized and detained goods are counterfeit goods-
 - (a) forfeit the goods to the State; or
 - (b) where the goods pose a risk to public health, safety or danger to property, destroy the goods.
- (3) Where the court orders the forfeiture of counterfeit goods the counterfeited goods shall, after three months from the date of the decision, either be destroyed by the implementing body or if imported into Uganda, be returned to the country of origin.
- (4) A person aggrieved by the decision of the implementing body may apply to the court for redress.

- (5) Where goods are required to be destroyed under this section, the implementing body shall carry out an environmental impact assessment before destroying the counterfeit goods.
- (6) A manufacturer, importer or a person from whom counterfeit goods are seized shall bear the cost for the destruction or re-export of the counterfeit goods under this section.

11. Suspension, termination, forfeiture and restoration of services

- (1) The implementing body which suspends any services under this Act shall—
 - (a) as soon as possible, but not later than five working days, inform the person responsible for making the services available to the public, in writing, of the reasons for suspension of the services;
 - (b) as soon as possible, but not later than five working days from the date of suspension—
 - (i) ascertain whether the services are counterfeit services;
 - (ii) terminate the counterfeit services;
 - (iii) confiscate any other equipment or tools used in making the counterfeit services available to the public; and
 - (iv) transport the confiscated equipment or tools to any place for safe custody, at the cost of the person who made the counterfeit services available to the public and if not capable of being removed or transported, declare the counterfeit services, equipment or tools to have been seized in the place where they are found, and seal off or seal and lock up the premises and place them under guard at the place where they were found.
- (2) Counterfeit services suspended under subsection (1) shall remain suspended until the implementing body is ordered by court to restore the services or to permanently terminate the services.
- (3) The equipment and tools confiscated under subsection (1) shall remain confiscated until -
 - (a) the implementing body is ordered by court to restore

equipment or tools to the person from whom the equipment or tools were confiscated; or

(b) the equipment or tools are forfeited to the State.

(4) A Court that convicts a person of an offence under this Act may order the forfeiture, to the State, of any equipment or tools in relation to which the offence was committed.

(5) An implementing body which suspends a counterfeit service under this Act may, upon ascertaining that the services are counterfeit services, permanently remove the counterfeit service from being available to the public.

(c) A person aggrieved by the suspension or termination of services may at any time apply to the court for a declaration that the services are not counterfeit services.

PART III—OFFENCES AND PENALTIES

12. Offences for dealing in counterfeit goods or counterfeit services

(1) A person who —

(a) in the course of trade, has in his or her possession or control any counterfeit goods or counterfeit services;

(b) in the course of trade, manufactures, produces, packages, re-packages, labels, sells, markets, composes, blends, processes or treats any counterfeit goods or makes available to the public any counterfeit services;

(c) has in his or her possession or control equipment or tools used for the manufacture, production, packaging, re-packaging, labelling, selling, marketing, composing, blending, processing or treating any counterfeit goods or producing or making available to the public counterfeit services;

(d) in the course of trade, sells, hires out, barter, or disposes of, or offers or exposes for sale, hiring out, or donates any counterfeit goods or counterfeit services;

- (e) distributes counterfeit goods or counterfeit services;
- (f) imports into, transits through or exports from Uganda counterfeit goods;
- (g) in the course of trade, disposes of any counterfeit goods or counterfeit services;
- (h) in any other manner, disposes of any counterfeits goods or counterfeit services in the course of trade;
- (i) has in his possession or control any labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hand tags, documentation, or packaging of any type or nature, with a counterfeit mark applied to it;
- (j) import into Uganda, any goods or items bearing a counterfeit trademark, trade name or which infringes any copyright;
- (k) in the course of trade, import into Uganda any goods or items except raw materials, that is unbranded with the intention of manufacturing, producing, packaging, re-packaging, labelling, selling, marketing, composing, blending, processing or treating any counterfeit goods;
- (l) fail to declare or falsifies the quantity of, or the intellectual property right subsisting in any goods being imported into the Uganda;
- (m) import into or transit through Uganda any labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hand tags, documentation, or packaging of any type or nature, with a counterfeit mark;
- (n) engages in acts of passing off or manufactures, produces, packages, re-packages, labels, sells, markets, composes, blends, processes or treats any counterfeit goods with the intention of passing off the goods as goods of another person; or
- (o) aids, abets or conspires in the commission of any offence under this section,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding ten years or to a fine not exceeding five times the value of the prevailing retail price for the genuine goods or service.

(2) Where court convicts a person under subsection (2), court may, in addition to any other orders —

- (a) forfeit to the State, counterfeit goods and all machinery, equipment or other material used in the commission of the offence;
- (b) order for the destruction of any counterfeit goods or counterfeit services where the counterfeit goods or counterfeit services are dangerous to or pose a risk to human or animal life, health or public safety;
- (c) close the premises where the offender carried on the business in respect of which the offence was committed;
- (d) order for the removal of any counterfeit good or counterfeit service from any premises or any other platform where the counterfeit goods or counterfeit services are displayed, made available for sale or accessible by the public;
- (e) order for the cancellation of a trading licence, permit or any other authorisation issued under any law; or
- (f) disqualify the convicted person from practising or engaging in any commercial activity for any period not exceeding ten years.

(3) A court that convicts a person of an offence under this section—

- (a) shall, when considering which penalty to impose, take into account any risk to human or animal life, health or safety or danger to property, whether movable or immovable, that may arise from the presence or use of the counterfeit goods or counterfeit service;
- (b) may take into account, in mitigation of the sentence, any evidence to the effect that that person, fully, truthfully and to the best of his or her knowledge, had disclosed to the implementing body or

authorised officer who investigated that offence, all information and particulars available to that person in relation to any or all of the following—

- (i) the source from which the counterfeit goods or counterfeit services involved in the commission of the offence, were obtained;
- (ii) the identity of the persons involved in the importation, exportation, manufacture, production, packaging, re-packaging, labelling, selling, marketing, blending, processing or treating any counterfeit goods or in the making of counterfeit services available to the public;
- (iii) the identity and, if reasonably demanded, the addresses or whereabouts of the persons involved in the distribution of the counterfeit goods or counterfeit services; or
- (iv) the channels for the distribution of the counterfeit goods or counterfeit services.

13. Obstruction of implementing body, authorised officer

A person who—

- (a) wilfully obstructs an implementing body or the authorised officer in the discharge of its functions, powers and duties under this Act;
- (b) wilfully fails to comply with any order of the implementing body or authorised officer;
- (c) without reasonable cause, fails to give to the implementing body or authorised officer any assistance or information which the implementing body or authorised officer requires in the exercise of its functions, powers and duties under this Act; or
- (d) makes a statement to the implementing body or authorised officer which the person knows to be false, commits an offence and is liable, on conviction, to a fine not exceeding two thousand five hundred currency points or to imprisonment for a period not exceeding three years, or both.

14. Breaking of seal

A person who without lawful authority, breaks, damages or tampers with a seal applied by the implementing body or authorised officer under this Act or removes any goods or services, document, article, items, objects or things sealed by the implementing body or authorised officer under this Act commits an offence and is liable, on conviction, to a fine not exceeding two thousand five hundred currency points or to imprisonment for a period not exceeding three years, or both

15. Liability of legal person

- (1) A legal person is capable of committing offences under this Act.
- (2) The liability of a legal person for an offence committed under this Act shall not exclude criminal proceedings against a natural person who –
 - (a) participates in the commission of the offence; or
 - (b) actually does the act or omission that constitute an offence under this Act.
- (3) Where an offence prescribed under this Act is committed by a legal person, court may—
 - (a) hold a shareholder, director, employee, manager, officer or any other principle officer or natural person in authority in the legal person to be responsible for the actions of the legal person and therefore liable for the offence committed and punished as provided in this Act; and
 - (b) in addition to any penalty prescribed in the relevant provision under this Act—
 - (i) impose a penalty not exceeding twenty thousand currency points on each count;
 - (ii) order for the cancellation of the registration of the legal person as a corporate body;
 - (iii) temporarily or permanently disqualify the legal person from the practice of any commercial activity;
 - (iv) temporarily or permanently close the establishment which have been used by the legal person to commit the offence; or

- (v) suspend or cancel the trading license or any other license issued under any law applicable in Uganda.

16. Disposal of fines

The fines imposed and recovered by the courts in respect of the contravention of any of the provisions of this Act or of any regulations made under this Act shall be distributed as follows—

- (a) fifty percent to the owner or licensee; and
- (b) fifty percent to the Consolidated Fund.

PART IV—MISCELLANEOUS

17. Authorised officers

- (1) The Minister may, in consultation with the Minister responsible for the relevant implementing body, appoint authorised officers for purposes of implementing the provisions of this Act.
- (2) Notwithstanding sub section (1), the following shall be authorised officers for purposes of this Act—
 - (a) a police officer;
 - (b) an employee of the implementing body designated by the Minister, in consultation with the Minister responsible for the implementing body.
- (3) The implementing body may, in writing, designate any of its functions to an authorised officer.

18. Immunity of officials

A suit, prosecution or other legal proceeding shall not be brought against the implementing body or an authorised officer who in good faith does any act for the purpose of giving effect to this Act.

19. Conflict of laws

(1) This Act shall take precedence over all existing laws relating to counterfeiting of goods and service in Uganda.

(2) Where there is a conflict between the provisions of this Act and any other law, the provisions of this Act shall prevail.

20. Regulations

(1) The Minister may, in consultation with the implementing body and the Minister responsible for implementing body, make regulations generally for the better carrying out of the provisions of this Act.

(2) Regulations made under this section may prescribe, in relation to a contravention of the regulations—

(a) a fine not exceeding one hundred currency points or imprisonment not exceeding two years or both;

(b) a requirement that the court shall order forfeiture to the state anything used or involved in the commission of the offence.

21. Amendment of Schedule

The Minister may, with the approval of Cabinet, by statutory instrument amend the Schedule to this Act.

SCHEDULES

SCHEDULE 1

Section 2

Currency point

One currency point is equivalent to twenty thousand shillings

DRAFT

SCHEDULE 2

Section 4 and 5

IMPLEMENTING BODIES

- (1) Uganda Registration Services Bureau;
- (2) Plant Varieties Protection Committee;
- (3) National Seed Board;
- (4) Uganda Communications Commission;
- (5) National Building Review Board;
- (6) Dairy Development Authority;
- (7) Uganda National Bureau of Standards;
- (8) National Environment Management Authority;
- (9) National Identification and Registration Authority;
- (10) Atomic Energy Council;
- (11) Agricultural (Chemicals) Control Board;
- (12) Uganda Revenue Authority;
- (13) National Information Technology Authority;
- (14) Uganda Investment Authority;
- (15) a local government.

Cross References

Agricultural Chemicals (Control) Act, No.17 of 2006
Atomic Energy Act Cap. 143
Building Control Act, No. 10 of 2013
Copyright and Neighbouring Rights Act, No.19 of 2006
Diary Industry Act Cap. 85
Electronic Media Act, Cap 104
Food and Drugs Act, Cap 278
Geographical Indications Act No.8 of 2013
Industrial Property Act No.3 of 2014
Investment Code Act No. 6 of 2019
Local Government Act Cap. 243
National Drug Policy and Authority Act Cap. 206
National Environment Act No.5 of 2019
National Information Technology Authority Uganda Act No.4 of 2009
Plant Variety Protection Act, No.16 of 2014
Registration of Persons Act No.4 of 2015
Seeds and Plant Act, No. 3 of 2007
Trademarks Act No. 17 of 2010
Uganda Communication Act No. 1 2013
Uganda National Bureau of Standards Act, Cap. 327
Uganda Registration Services Bureau Act, Cap. 210
Uganda Revenue Authority Act Cap. 196